

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Pete Dieter,

Court File No.

Plaintiff,

vs.

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

Gardner Builders Minneapolis, LLC d/b/a
Gardner Builders; Gardner Builders
Duluth, LLC d/b/a Gardner Builders; LHB,
Inc.; Jennifer M. Babcock;

Defendants.

Plaintiff, for his Complaint against Defendants above-named, states and alleges as follows:

I. JURISDICTION AND VENUE

1. Federal jurisdiction exists, pursuant to 28 U.S.C. § 1332 due to complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

2. Venue is proper in the United States District Court District of Minnesota, pursuant to 28 U.S.C. § 1391(b)(2), as the claims arose in this district.

II. THE PARTIES

3. **PETE DIETER** has been a resident of Illinois at all time relevant herein, including on December 5, 2018.

4. On December 5, 2018, Pete Dieter was an employee of Alliance Concrete Sawing & Drilling LLC.

5. On December 5, 2018, as a part of his employment with Alliance Concrete Sawing & Drilling LLC, Pete Dieter was working as a construction laborer at the Armory Arts & Music building located at 1301 London Road in Duluth, Minnesota.

6. **GARDNER BUILDERS MINNEAPOLIS, LLC D/B/A GARDNER BUILDERS** is a foreign business, organized under the laws of Delaware.

7. Its principal place of business and registered office address is 730 Second Avenue, Suite No. 1233 in Minneapolis, Minnesota.

8. Based on information and belief, Gardner Builders Minneapolis, LLC d/b/a Gardner Builders has no members that are citizens of the State of Illinois.

9. Gardner Builders is an assumed name which is registered to Gardner Builders, LLC.

10. Gardner Builders, LLC is the prior business name of Gardner Builders of Minneapolis, LLC.

11. Gardner Builders Minneapolis, LLC does business as Gardner Builders, and did so as of December 5, 2018.

12. Gardner Builders of Minneapolis, LLC d/b/a Gardner Builders was hired by the Armory Arts and Music Center to serve as the contractor to stabilize and renovate the drill hall floor of the Armory Arts & Music building located at 1301 London Road in Duluth, Minnesota.

13. **GARDNER BUILDERS DULUTH, LLC D/B/A GARDNER BUILDERS** is a foreign business, organized under the laws of Delaware.

14. Its principal place of business is located at 730 Second Avenue, Suite No. 1233 in Minneapolis, Minnesota.

15. Its registered office address is 2 West Duluth Street, Suite No. 133 in Duluth, MN 55802.

16. Based on information and belief, Gardner Builders Duluth, LLC d/b/a Gardner Builders has no members that are citizens of the State of Illinois.

17. Gardner Builders Duluth, LLC does business as Gardner Builders, and did so as of December 5, 2018.

18. Gardner Builders Duluth, LLC d/b/a Gardner Builders hired Alliance Concrete Sawing & Drilling LLC as a subcontractor to perform work at the Armory Arts & Music building.

19. The work subcontracted to Alliance Concrete Sawing & Drilling LLC included the demolition of portions of the Armory Arts & Music building.

20. **LHB, INC.** is a for-profit business corporation registered under the laws of Minnesota.

21. Its principal place of business and registered office address is 21 W Superior Street, Suite No. 500 in Duluth, Minnesota.

22. LHB, Inc. provided engineering services to the Armory Arts & Music renovation and stabilization project, including the creation and/or approval of demolition and shoring plans pertaining to the drill hall floor.

23. **JENNIFER M. BABCOCK** is a citizen of Wisconsin.

24. She is licensed in the State of Minnesota as a Professional Engineer, license no. 40768.

25. Jennifer M. Babcock was an employee of LHB, Inc. and was the structural engineer of record for the Armory Arts & Music stabilization and renovation project.

26. Jennifer M. Babcock also served as the Design Professional in Responsible Charge for the project for which Alliance Concrete Sawing & Drilling LLC and Pete Dieter were working on December 5, 2018.

27. As the Design Professional in Responsible Charge, Jennifer M. Babcock was responsible for reviewing and coordinating submittal documents prepared by others, including phased and deferred submittal items (which include construction documents, special inspection and structural observation programs, and other data), for compatibility with the design of the building. *See* Minn. R. 1330.0130, subparts 1 and 9.

III. STATEMENT OF FACTS

28. The Armory Arts & Music building located at 1301 London Road in Duluth, Minnesota was the former Duluth National Guard Armory building.

29. For decades, various entities worked to repurpose and reuse this building.

30. During those decades, various entities noted concerns regarding the structural stability of the Armory Arts & Music building.

31. As a part of the larger plan to renovate and reuse this building, on October 26, 2018, Gardner Builders applied for a permit with the City of Duluth to stabilize the drill hall floor at the Armory Arts & Music building.

32. The purpose October 26, 2018, permitted work was to remove and replace a structural slab, and the project was valued to cost \$973,000.

33. Gardner Builders acted as the general contractor for the project.

34. As the general contractor, Gardner Builders had to supervise and direct the work performed at the Armory Arts & Music building, including the work performed by subcontractors.

35. Gardner Builders subcontracted with Alliance Concrete Sawing & Drilling LLC to perform aspects of the project.

36. LHB, Inc. and its licensed engineer, Jennifer M. Babcock, were retained as the engineers on the project.

37. The permit was granted on November 21, 2018, and work commenced thereafter.

38. In plans submitted to the City of Duluth to obtain the permit, there is no mention of demolition or shoring plans that would have been necessary to ensure that the work completed by Alliance Concrete Sawing & Drilling LLC, and its employees, including Pete Dieter, would be safe, given the known instability of the Armory Arts & Music building.

39. Prior to the December 5, 2018, collapse, Alliance Concrete Sawing & Drilling LLC employees, including Pete Dieter performed various demolition work, including the removal of shoring below the floor that ultimately collapsed.

40. The general contractor, Gardner Builders, was aware of and approved the work performed Alliance Concrete Sawing & Drilling LLC and its employees prior to and on December 5, 2018.

41. In fact, during this time, the employee and/or agent of Gardner Builders periodically supervised the employees Alliance Concrete Sawing & Drilling LLC and was generally aware of the work being performed at the Armory Arts & Music building.

42. During this time, this Gardner Builders' employee and/or agent did not engage in any construction work that was similar to the construction work of Alliance Concrete Sawing & Drilling LLC. Rather, his onsite work during this time was limited to supervision and direction of work performed by others.

43. On December 5, 2018, Pete Dieter and other employees of Alliance Concrete Sawing & Drilling LLC were working on the second floor of the Armory Arts & Music building.

44. While they were working on the second floor, the floor gave out and collapsed, causing Pete Dieter, other Alliance Concrete Sawing & Drilling LLC employees, and heavy equipment to fall through the floor to the level below.

45. Pete Dieter suffered multiple injuries as a result of the floor collapse, which occurred due to no fault of his own.

46. At the time of the collapse, no Gardner Builders' employee and/or agent was present on the floor that collapsed.

47. Following the floor collapse, the City of Duluth Building Official issued a Stop Work Order, pursuant to Minn. R. 13000.0170, which allows such orders to be issued when when "the building official finds any work regulated by the code being performed in a manner contrary to the provisions of the code or in a dangerous or unsafe manner." In the Stop Work Order, the City of Duluth Building Official indicated that the purpose of stopping the work was due to "unstable building condition."

48. Since the incident on December 5, 2018, Pete Dieter continues to be affected by his injuries sustained as a result of the incident. Some of the injuries Pete Dieter sustained as a result of the incident on December 5, 2018, are permanent.

IV. LEGAL THEORIES

49. Plaintiff incorporates all consistent paragraphs of this Complaint as if fully set forth under this count and further alleges the following:

50. That, at all times material to this Complaint, Defendants had duties to exercise reasonable care to either prevent or protect individuals while working at the Armory Arts & Music building or warn of the hazards present therein.

51. That, notwithstanding these duties, Defendants, by and through their agents, servants and employees, violated the applicable standards of care that included, but were not limited to, the following:

- a. Failing to ensure that the construction site was sufficiently stable to allow the employees of Alliance Concrete Sawing & Drilling LLC, including Pete Dieter, to work on the site.
- b. Failing to meet professional standards in the drafting or reviewing of the demolition and stabilization plans for the permitted work at the Armory Arts & Music building.
- c. Failing to warn Pete Dieter of the dangerous conditions then and there existing, when Defendants knew, or in the exercise of ordinary care should have known, that said warning was necessary to prevent injury to individuals present on the premises.
- d. Failing to ensure that safe construction was being performed in accordance with custom and practice in the construction industry and/or specific trade.

52. That, the careless or negligent acts or omissions of Defendants, by and through their agents, servants and employees, were the proximate cause of Pete Dieter's injuries.

53. That, the acts and omissions above referenced were performed in the course of employment, thereby making the Defendant corporations accountable and vicariously liable as their principal under the doctrine of *Respondeat Superior*.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendants jointly, concurrently, vicariously, and/or severally—for a reasonable sum in excess of seventy-five thousand dollars (\$75,000.00), together with interest, costs and disbursements herein, and granting such other equitable relief as the Court deems just and equitable.

**PLAINTIFF DEMANDS A JURY TRIAL FOR ALL OF THE ISSUES AND CAUSES
PLED HEREIN SO TRIABLE.**

KOSIERADZKI SMITH LAW FIRM, LLC

Dated: October 23, 2020

s/ Andrew D. Gross

Mark R. Kosieradzki (ID # 57745)

Andrew D. Gross (ID #0395389)

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